the plaintiff is not required to make out his own fraud he may have relief. But when a parent pays the consideration for property conveyed to a child the presumption is that the child takes beneficially, *Christy* v. *Courtenay* (1850) 13 Beav. 96, and this presumption must be rebutted by proof of the parent's other intention. *Dana* v. *Dana* (1891) 154 Mass. 491. By so doing in the principal case the plaintiff, it is submitted, proved his own fraud.

The rule that courts will not enforce illegal contracts has been subjected to some apparent modifications. The reason for the rule is obviously that a court cannot do anything inconsistent with its nature. So, whether the illegality be pleaded or not, it is the duty of the court to take cognizance of it. *Claflin* v. *U. S. Credit Co.* (1896) 165 Mass. 501; *Richardson* v. *Buhl* (1889) 77 Mich. 632, 651; *Wright* v. *Rindskopf* (1877) 43 Wis. 344. If before an illegal contract is executed one party seeks to recover money paid under it, he may do so. *Tappenden* v. *Randall* (1801) 2 Bos. & P. 467; Keener on Quasi Contracts 259. The courts are then preventing the performance of an illegality. So, though in the case of a fraudulent conveyance, equity ordinarily will enforce no agreement to reconvey, yet if the grantor repent and purge himself of his fraud by seeking a reconveyance in the interests of his creditors, the grantee only being then at fault, a recovery may be had upon the analogy of an unexecuted illegal contract. *Carll* v. *Emery* (1888) 148 Mass. 32. Likewise, the defense of illegality cannot be applied to a case where money earned under an illegal contract has come into the hands of a third person to pay over; *Tenant* v. *Elliott* (1797) 1 Bos. & P. 3; or to the enforcement of a bond given for past co-habitation, (though it may be if the bond be for the future) *Gray* v. *Mathias* (1800) 5 Vesey 286; or to a case of a partner recovering the proceeds of a illegal business from his co-partner. *Brooks* v. *Martin* (1863) 2 Wallace 70. To such cases as these the rule laid down in the principal case applies: the plaintiff may recover if he can prove a subsequent contract, express or implied, distinct from and without recourse to the previous illegal contract. But this rule, it is apparent, cannot apply to a fraudulent conveyance. The reconveyance is of the essence of the transaction; for equity to imply a resulting trust or enforce an agreement to reconvey would be to execute the illegality.

SHALL THE DOCTRINE OF ESTOPPEL IN PAIS APPLY IN CRIMINAL LAW?—In a recent case in Montana the defendant objected that the indictment under which he was arraigned had not been found by a grand jury legally constituted, since by the misfeasance of the defendant as county commissioner, the jury roll from which the grand jury had been drawn was wholly irregular. The court held that the defendant was estopped to deny the validity of the list and so set up his own wrong doing as a defense. *State* v. *Second Judicial Dist. Court* (1904) 78 Pac. 769.

The doctrine of estoppel in pais is equitable in its origin though for a long time it has been as fully available in law as in equity. *Freeman* v. *Cooke* (1848) 2 Ex. 653. An estoppel is defined as an agency of the law by which evidence to controvert the truth of certain admis-

sions is excluded. Biglow, Estoppel, lix. It is therefore a branch of the law of evidence, and there would appear to be no inherent difficulty in its application to the criminal law. Estoppel in pais is to be distinguished at the outset from that estoppel most familiar to the criminal law, and which arises from the nature of an act committed: as where the act is of such a nature that the defendant is estopped to deny the intent to commit it. In such cases the presumption of an intent is so strong as to become in law conclusive. Such estoppel is therefore only that which denies the right to rebut a conclusive presumption. In some jurisdictions, however, an estoppel is allowed to be found in two classes of cases where no conclusive presumptions arise from the acts themselves. One is where, on an indictment for embezzlement of the property of his principal, the agent is estopped to deny the agency he assumed and under color of which he received the property, Ex parte *Hedley* (1866) 31 Cal. 109; the second, where one is estopped to deny the validity of a signature which he did not at once repudiate, when the signer of his name is on trial for the forgery. *Reg.* v. *Smith* (1862) 3 Fost & F. 504. The admissions, however, forming the ground for estoppel in pais are only available to the party to whom they were made and who must be a party to the action. It is the fact of an otherwise possible prejudice to the other party which makes the admissions conclusive as to their truth. In both the classes of cases above the State was a party to the action, but in neither had the representations been made to it. An attempt has been made to justify the first class on the broad ground that one should not be allowed to take advantage of his own wrong, 2 Bishop Crim. Law § 364, but the difficulty seems to be insuperable that, save for this technicality, the crime charged had not been committed; and the justification attempted is contrary to the principle, that, in criminal actions the right of the State is to be strictly confined; and, to the tendency of the law to enlarge, in criminal actions, the rights of the defendant.

In the principal case, however, there would seem to have existed no objection to an application of the doctrine. The representations of the defendant had been made directly to the State and the State had acted on them to its disadvantage, to allow the defendant to deny the truth of his representations would have prejudiced the interest of a party to the action, and as against him therefore their truth should have been conclusive.

LIABILITY OF AN AGENT TO ACCOUNT FOR SECRET PROFITS.—From a fundamental principle of the law of agency, that the relation of principal and agent calls for an exercise of wholly disinterested zeal by the latter in discharging the duties of his employment, has grown the rule that all profits made by the agent in the course of his employment, beyond an agreed compensation, enure to the benefit of his principal. Story, Agency § 211. *Massey* v. *Davies* (1794) 2 Ves. Jr. 317. Where the profits are made in the course of the agency it may be presumed that they were intended for the principal's benefit; but the right of the principal is placed on broader grounds, and, though the profits are made in